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In the High Court of Judicature at Madras

Dated: 17.11.2006

Coram:

The Hon'ble Mr.Justice K.CHANDRU.

C.R.P.(PD) No.78 of 2006
and
C.M.P.No.757 of 2006

Venugopal, S/o Ramasamy ... Petitioner

Vs.

V.Rani, D/o Gopal Gounder ... Respondent

Civil Revision Petition filed under Section 115 of C.P.C., against the fair and decretal order dated 9.11.2005 passed in I.A.No.21 of 2001 in HMOP No.59 of 1998 on the file of the Subordinate Judge, Thirupathur, Vellore District.

For Petitioners .. Mr.Sunder Mohan

For Respondent .. M/s.S.Meena Kumari.

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O R D E R

This Civil Revision Petition is filed by the husband against the order of interim maintenance granted by the trial Court to the respondent/wife, pending H.M.O.P.

2. I have heard Mr.Sunder Mohan, learned counsel appearing for the petitioner/husband and Mrs.S.Meena Kumari, learned counsel appearing for the Respondent/wife.

3. The learned counsel for the petitioner/husband states that subsequent to the filing of the Civil Revision Petition, the H.M.O.P., itself has been dismissed for want of appearance of his client.

4. The main contention of the learned counsel for the petitioner is that the trial Court has not taken into account the maintaining capacity of the wife. The wife has already filed an application before the Judicial Magistrate's Court claiming maintenance under Section 125 Cr.P.C. and the Judicial Magistrate

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has directed the petitioner to pay maintenance to his wife and that has not been taken into account by the trial Court. I do not find any ground to interfere with the order of interim maintenance granted by the trial Court pending H.M.O.P. filed by the petitioner.

5. However, it is made clear that the respondent/wife has made two claims, taking advantage of two maintenance orders one under Section 125 Cr.P.C. and other under Section 24 of the Hindu Marriage Act. Therefore, it would be appropriate to direct the petitioner to pay a sum of Rs.1000/- towards maintenance to his wife as granted by the order of trial Court, since it is the higher amount. Except for the above direction, this Civil Revision Petition is dismissed. No costs. Consequently, C.M.P.No.757 of 2006 is closed.

gr.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Subordinate Judge, Tirupathur.

2. The Record Keeper, VR Section, High Court
Madras

+ one cc to Mr. Sundar Mohan, Advocate sr no. 56308
+ one cc to Mr. D. Balachandran,Advocate sr no. 55968

LA(co)
NM(12.12.2006)

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